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ABSTRACT

Canon 35 of the American Bar Association's Canons of Judicial Ethics is an advisory ban on cameras and news equipment in courtrooms. In 1978, the Louisiana Supreme Court authorized a one-year pilot project on electronic coverage of court proceedings. The authorization set forth certain technical requirements concerning the nature and placement of equipment and personnel and the use made of media material. Written permission for such coverage was to be obtained from both parties involved in the case and their counsel. In the two cases for which permission was obtained, polled jurors said they felt neither distraction nor disruption because of camera equipment. Permission was granted to extend the experiment for another year, but a bill was introduced into the state legislature prohibiting the use of cameras on the grounds that they turned the courtroom into a showroom. Despite such setbacks for those believing the public's right to know is best served by electronic news coverage in courtrooms, such coverage is almost certainly in Louisiana's future, as technological advances have discredited many objections and changing attitudes are slowly overcoming the objections that remain. (HTH)

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# ONE STEP FORWARD, TWO STEPS BACK:

# AN UPDATE ON CAMERAS IN LOUISIANA COURTROOMS

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ONE STEP FORWARD, TWO STEPS BACK:

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When Gov. Edwin A. Edwards signed into law a bill restricting television in the courtroom, Louisiana's experimental program seemed to have ended by legislative decree. The one-year experiment had not been a particular success anyway, in the sense that the required written permission of the parties and their counsel was not forthcoming except in two instances. The state Supreme Court then extended the project for one year, beginning May 3, 1979. At that point the legislature apparently intervened with Act 456, approved by the governor July 13, 1979. The apparent conflict between legislative enactment and judicial intent remains to be resolved.

## Cameras in Louisiana Courtrooms: ABA Philosophy

Concern over the effect of cameras in courtrooms gained momentum after the 1935 trial of Bruno Richard Hauptmann in New Jersey for the kidnapping and murder of the Lindbergh baby. Photographers at the trial moved about freely, despite an order that no pictures be taken during court sessions.[1] As a consequence the American Bar Association added Canon 35 to its Canons of Judicial Ethics:

> Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted.[2]

The ABA amended the Canon in 1952 by inserting a ban on the televising of court proceedings and inserting the words "distract the witness in giving his testimony," before the phrase "degrade the court." In 1963 the ABA amended the Canon again, deleting the phrases "are calculated to" and "degrade the court" and substituting "distract participants and witnesses in giving testimony" for the comparable words which had been inserted in 1952.[3] The result was to soften the impact but to extend the application of Canon 35.

Then in 1972 Canon 35 was superseded by 3A(7) of the Code of Judicial Conduct, which states that a judge should prohibit "broadcasting, telecasting, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions," with exceptions for recording of testimony, publicizing ceremonial occasions, and for purposes of instruction.[4]

In 1978 an attempt was made to modify ABA policy when the Standing Committee on Association Standards for Criminal Justice proposed this statement in its standards relating to the conduct of the trial: "Television, radio, and photographic coverage of judicial proceedings is not per se inconsistent with the right to a fair trial."[5] The proposal was rejected by the ABA's House of Delegates in August 1978 when it deleted that language from the draft version of the chapter on Fair Trial and Free Press, and in February 1979 the ABA defeated a proposal to lift the ban that had been instituted in 1937.[6]

Although the ABA ban on courtroom photography, as expressed in Canon 35, was only advisory, all states except Colorado, Oklahoma, and Texas, adopted the ban itself or a modification of the ban.[7] Louisiana was among those states

to enforce a ban, and when the ABA replaced Canon 35 with Canon 3A(7), Louisiana followed suit with its own Canon 3A(7), adopted March 5, 1975. Its language tracks that of the ABA provision.[8] Individual courts are free to fashion their own rules under state Supreme Court supervision, and such rules generally reflect the ABA philosophy.[9]

## Cameras in Louisiana Courtrooms: Some Case Law

A case often cited to illustrate the evils of cameras in courtrooms has nothing, actually, to do with courtrooms. Rideau v. Louisiana involves an assertion of prejudicial publicity based on a televised interview in which Wilbert Rideau admitted to Sheriff Henry H. Reid that he had committed a bank robbery, kidnapping, and murder the previous day. The filmed interview was broadcast three times over KPLC in Lake Charles to audiences estimated at 24,000, 53,000, and 29,000, respectively, and the telecasts took place some two weeks before Rideau's arraignment.[10]

As Mr. Justice Stewart said for the U.S. Supreme Court:

> For anyone who has ever watched television the conclusion cannot be avoided that this spectacle, to the tens of thousands of people who saw and heard it, in a very real sense <u>was</u> Rideau's trial--at which he pleaded guilty to murder. Any subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality. . . . Under our Constitution's guarantee of due process, a person accused of committing a crime is vouchsafed basic minimal rights. Among these are the right to counsel, the right to plead not guilty, and the right to be tried in a courtroom presided over by a judge. Yet in this case the people of Calcasieu Parish saw and heard, not once but three times, a "trial" of Rideau in a jail, presided over by a sheriff, where there was no lawyer to advise Rideau of his right to stand mute.[11]

Rideau was, in effect, tried before television cameras in the office of the sheriff. No one who had seen that "trial" could have doubted Rideau's

guilt, yet three members of the jury which convicted him stated during voir dire examination that they had seen Rideau's televised interview with the sheriff. The trial judge refused to excuse them for cause despite the fact they admitted having heard the following exchange:

SHERIFF: And then what did you do as they ran?
RIDEAU: I shot them.
SHERIFF: You shot? Well, uh, did you hit 'em? Did you notice?
RIDEAU: I don't know. They fell down.
SHERIFF: How many of them fell? The two women fell. Tell what happened when you went back to the old woman as she was laying, as she was lying on the road.
RIDEAU: I stabbed her.
SHERIFF: You stabbed her? What was it with, a hunting knife?
RIDEAU: A hunting knife.

Perhaps it is not logical to equate this performance and its inherent unfairness with the performance of television in a controlled situation, that is, in a genuine courtroom. But if one were to ask a random sample of attorneys to state the rule of law in Rideau v. Louisiana, the responses probably would center on the prejudicial effect of television, not on the failure of law enforcement authorities and the courts to observe the fundamental rights of due process.

A later case illustrates the use of judicial contempt power to punish a reporter who had the temerity to operate a television camera in the court environs.

In 1975 Richard Angelico of WVUE interviewed an alleged kidnap victim in the basement driveway of the Orleans Parish Criminal District Court building, where he had positioned his camera and recording crew. Ms. Edna Halbedal had just completed her testimony before a state grand jury and was being conveyed

in her wheelchair from the courtroom basement when Angelico approached her for an interview. Court rules forbade the operation of cameras and recording equipment in the halls of the Criminal Courts Building, and the judges of the Criminal District Court cited Angelico for contempt, found him guilty, and sentenced him to pay a fine of $500 or serve 30 days in jail.

Angelico brought a habeas corpus action in federal court, following his state court conviction. He contended that the court rule prohibiting camera and recording equipment in the "halls" of the court building could not be understood to apply to the driveway and thus was unconstitutionally vague. The Court of Appeals for the 5th Circuit agreed.[12]

Unlike the situation in Rideau v. Louisiana, where television was merely a medium through which prejudicial publicity was expressed and where the victim was not a member of the press, the Angelico case illustrates how court rules can be applied against the media. But both cases have this in common: They may be cited to justify the imposition of restraints on cameras in the courtroom, or in its "environs," because of the media evils they may be said to illustrate. And such cases may weaken the chances for success of experimental programs using television in the courtroom.

## Cameras in Louisiana Courtrooms: An Experiment

Despite the prejudicial effect of Rideau and the intrusiveness of Angelico, the Louisiana Supreme Court authorized a one-year pilot project on camera and electronic coverage of court proceedings in Division B of the 9th Judicial District Court for Rapides Parish, beginning Feb. 23, 1978.[13]

The project was to be conducted with the assistance of an advisory committee consisting of four media representatives and a representative of the Judicial Administrator's Office, and Judge Guy E. Humphries was to be the presiding judge. Judge Humphries was directed to file an evaluative report at the end of the one-year experiment.

The authorization by the state Supreme Court set forth certain technical requirements relating to the nature of the equipment, the number of personnel, their location in the courtroom, and the use made of media material. In addition, written permission was to be obtained from the parties and their counsel, as well as the victim and the District Attorney in criminal cases.

The necessary permission was obtained in only two cases during the year-long experiment. The first was in Louisiana v. Reid, an action by the state against the sheriff of Calcasieu Parish. During the course of the trial the jury was taken to view property owned by the sheriff, and the television cameras accompanied the group. The station aired a five minute special of the film it had taken. Cameras also recorded and broadcast the verdict as it was rendered by the jury.[14]

Judge Humphries' report to the Louisiana Supreme Court indicated that jurors were polled on their reactions to the cameras and other electronic equipment. They replied, according to Judge Humphries, that they felt neither distraction nor disruption because of the presence of the equipment. The attorneys also replied in the negative, and Judge Humphries reported that "There was no more awareness of the TV camera than there was of people in the courtroom."[15]

The only other instance in which the required permission was obtained was in State v. Williams, a criminal trial in Rapides Parish. Besides the normal

contingent of courtroom observers, there was a television camera, microphones from the local radio station, a cassette recorder, and a still camera, plus media personnel to operate them. These persons and their equipment were stationed in the courtroom at the direction of the judge.[16]

Judge Humphries reported that the radio station carried the entire matter live, without interruption, and that "many just stayed by the radio to listen, even though it was approximately two hours."[17]

The jury was aware that the trial was being filmed. When polled after the trial, all stated they were not affected by the presence of the camera, nor did they feel that television coverage placed any greater importance on the case. Judge Humphries summed up his own reaction in much the same way as he had following Louisiana v. Reid: "One has a subconscious awareness of the cameras equal to one's awareness of the people in the courtroom."[18]

In his evaluation of the pilot project at the end of the year, Judge Humphries wrote that in his opinion, "[C]ameras should be permitted in the courtroom at the discretion of the trial judge."[19]

He added:

> The Court determined that the many fears that are expressed about the presence of the TV camera are unfounded.
>
> There was no loss of dignity or decorum in the courtroom whatever.
>
> Neither the attorneys nor the judge tended to act or "ham it up" because of the presence of the cameras.
>
> The cameras were not distracting in anyway. [sic] The lawyers argued to the jury and did not argue to the camera. The Court in giving the charge to the jury addressed the jury and not the camera.
>
> The television is a part of the modern way of life. The writer sees the entrance of television cameras into the courtroom for the benefit of the viewing public as well as for the benefit of the court.
>
> In both instances the parts of the trial that were broadcast were very objective. I feel that the news media can be more objective about reporting court proceedings if permitted to use cameras and electronic equipment.[20]

Because only two trials were included in the experiment, Judge Humphries requested permission from the Louisiana Supreme Court to extend the project for an additional year, this time without requiring consent from attorneys, parties, and victim.[21] The court granted permission for a new one-year experiment, ending May 3, 1980, but under the same guidelines as before.[22]

## Cameras in Louisiana Courtrooms: Act 456

Before the pilot project extension was underway--in fact, before it was approved--Louisiana Representatives L. G. LaPlante, D-Cutoff, and Hunt Downer, D-Houma, introduced a bill in the House to prohibit the use of television equipment in court. LaPlante said, "I think you would find attorneys putting on their grease and powder and theatrical makeup and trying to turn the courtroom into a showroom."[23] He reportedly also said that the strongest advocates of televised courtroom trials were merely interested in new sources of entertainment to satisfy the jaded demands of audiences.[24]

HB 615 was signed into law July 13, 1979, in amended form. As Act 456 it reads in part:

> Section 4164 of Title 13 of the Louisiana Revised Statutes of 1950 is hereby enacted to read as follows:
> §4164. Television
> A. Except as otherwise provided herein, no proceeding in any court in this state shall be televised or recorded by television equipment.
> B. Each court in this state may provide by court rule for the broadcasting or recordation for broadcasting of proceedings for preservation of testimony or for use in a course of instruction in an accredited law school.
> C. A proceeding in court may be televised or recorded by television equipment in accordance with the terms of a motion and stipulation agreed to by all parties to the proceeding and approved by the judge hearing the matter.

Paragraph C is an amendment to the bill as it was originally introduced, and despite the avowed intent of the bill's authors, the amendment may have the effect of negating that intent. The apparently contradictory provision appears to take the matter out of the hands of the state Supreme Court and place it in the hands of trial judges, perhaps making televised proceedings easier to arrange than before.

Confusion over the meaning of Act 456 is reflected in an article published in the September/October 1979 issue of Louisiana Judicial Newsletter. Entitled, "Act 456--For Or Against T.V.?" the article reads, in part:

> The whole question of TV in the courts in Louisiana is somewhat blurred, thanks to Act 456 of the 1979 Louisiana Legislature. Act 456 is the result of a bill which was introduced by Representatives L. G. LaPlante, Jr. of Cutoff, and Huntington B. Downer, Jr. of Houma, intending to outlaw TV in the courts except for educational purposes or for the preservation of testimony. . . .
>
> Considerable confusion has arisen as to what [paragraphs A, B, and C mean]. Some feel that, in addition to educational and testimony preservation provisions for TV in the courts, the Act gives the trial judge the right to televise or record any proceeding in the court and for uses other than educational. On the other hand there are those who contend that paragraph "C" is really referring to procedure that the judge must follow before he or she may televise--even for educational purposes.
>
> No matter which position is championed, there is yet another aspect of this situation that deserves consideration. There is the question of whether or not the legislature is overstepping its authority in creating rules for the supervision of court proceedings. Is the question of TV in the courts subject to canon or to statute? The constitution places supervision of the courts in the hands of the Supreme Court, yet Act 456 restricts (or sanctions) proceedings in the courts.
>
> To televise or not televise, that is the question?[25]

There have been two opportunities for resolution of the matter since passage of the Act in July, but in each instance the state Supreme Court has chosen to decide the issue presented to it without confronting the question of the meaning of Act 456.

In the first instance Judge Samuel T. Rowe, 21st Judicial District Court, requested permission on July 26 to videotape criminal proceedings for limited educational purposes. The Supreme Court's Judicial Administrator advised the court that the request would substantially accord with Canon 3A(7) of the Louisiana Code of Judicial Conduct, and that approval of the request would not conflict with Act 456 (if applicable).[26]

The Justices therefore approved Judge Rowe's request, subject to the conditions he proposed and adding the requirement that the consent of the defendant be secured. Judge Rowe had indicated that the videotapes would be made available only to the judiciary, the District Attorney's staff, and the Public Defender's office for viewing only within a courthouse of any parish of the 21st Judicial District. Public broadcast of the videotape was not proposed.[27]

In the second instance the high court was asked to rule directly on the apparent conflict between L.R.S. 13:4164 (Act 456) and 3A(7) of the Canons of Judicial Ethics. The case arose in a gubernatorial election contest suit filed by James Fitzmorris against Louis Lambert. Fitzmorris sought to be named the second-place finisher for a slot in the December runoff, although unofficial recounts showed Lambert ahead by a margin of 2,400 votes. Public interest in the vote challenge led Baton Rouge television station WBRZ to file a motion in the 19th Judicial District Court to televise the proceedings. All parties joined in the motion.[28]

Judge Douglas M. Gonzales certified to the Louisiana Supreme Court the question of the apparent conflict between the statute and the canon, and he requested a Supreme Court ruling.[29]

The response, filed that same day, denied certification--in effect, declining to rule on the apparent conflict. In its brief statement the Court held "There is not necessarily a conflict between the statute (Act 456 of 1979) and the Canons of Judicial Ethics (Canon 3A(7)) as long as the trial judge in exercising his authority under the statute complies with the requirement of the Canons which he is obligated to do until the Canon is amended."[30]

The Court thus refused to settle the conflict, and Judge Gonzales declined to authorize the presence of television cameras.

## Cameras in Louisiana Courtrooms: The Future

Despite repeated setbacks for those who believe that the public right to know is best served by permitting media access to Louisiana courtrooms for electronic news coverage, such coverage is almost certainly in Louisiana's future. Technological advances have discredited many objections, and changing attitudes are slowly overcoming objections that remain. While the television pilot project may be seen as one step forward, and Act 456 may be seen as two steps back, the relation between the media and the judiciary is light-years away from the relationship that existed in 1936, the year Bruno Richard Hauptmann was executed.

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[1]Frank Wm. White, "Cameras in the Courtroom: A U.S. Survey," Journalism Monographs, No. 60 (April 1979), p.4.

[2]See amicus curiae brief of the American Bar Association appended to the concurring opinion of Mr. Justice Harlan in Estes v. Texas, 381 U.S. 532 (1965).

[3]Id.

[4]American Bar Association, Canon 3A(7), Code of Judicial Conduct.

[5]"Fair Trial and Free Press," American Bar Association Standards Relating to the Administration of Criminal Justice (Washington, 1978), p. 22.

[6]"ABA Keeps Courtroom TV Ban," News Media & the Law, May/June 1979, p. 22.

[7]William E. Francois, Mass Media Law and Regulation (Columbus, 1978), p. 307.

[8]Supreme Court of Louisiana, Canon 3A(7), Code of Judicial Conduct.

[9]See West's Louisiana Rules of Court 1980, passim.

[10]Rideau v. La., 373 U.S. 723 (1963).

[11]Id.

[12]Angelico v. La., 5 Med. L. Rptr. 1027 (5th Cir. 1979).

[13]"Television and Court Rules and Regulations for Division B of the Ninth Judicial District Court for Rapides Parish Effective February 23, 1978."

[14]"Report on Pilot Project on the Presence of Cameras and Electronic Equipment in the Courtroom," undated, pp. 1-2.

[15]Id. at 2.

[16]Id. at 2.

[17]Id. at 3.

[18]Id. at 4.

[19]Id. at 4.

[20]Id. at 4.

[21]Id. at 5.

[22]State Times (Baton Rouge, La.), May 7, 1979, p. 9-A.

[23]State Times (Baton Rouge, La.), Apr. 26, 1979, p. 14-A.

[24]Id.

[25]pp. 3,7.

[26]Information contained in personal communication from Mrs. John M. Holahan, Public Information Officer, Louisiana Supreme Court, Jan. 18, 1980.

[27]Id.

[28]Fitzmorris v. Lambert, No. 229,974 (19th Judicial District Court, La., filed Nov. 6, 1979).

[29]Id.

[30]Fitzmorris v. Lambert, No. 66,059 (Louisiana Supreme Court, filed Nov. 6, 1979).